

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN LAMONT SCOTT,

Defendant-Appellant.

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UNPUBLISHED

August 20, 2013

No. 309901

Oakland Circuit Court

LC No. 2009-226979-FH

Before: BOONSTRA, P.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right his March 26, 2012, jury trial convictions of possession of a burglar's tool, MCL 750.116, larceny in a building, MCL 750.360, and stealing, knowingly taking, or knowingly removing a financial transaction device, MCL 750.157n. Defendant was sentenced to 4 to 25 years' imprisonment for possession of a burglar's tool, and 4 to 15 years each for larceny in a building and stealing a financial transaction device. We affirm.

This is defendant's second appeal to this Court. On April 8, 2010, defendant was convicted in a jury trial of possession of a burglar's tool, MCL 750.116, larceny in a building, MCL 750.360, and stealing, knowingly taking, or knowingly removing a financial transaction device, MCL 750.157n. Defendant appealed his April 8, 2010, conviction to this Court, and this Court decided defendant's first appeal on August 16, 2011, in an unpublished, per curiam opinion. *People v Scott*, unpublished opinion per curiam of the Court of Appeals, issued August 16, 2011 (Docket No. 298902).<sup>1</sup>

The following was at issue in defendant's first appeal: At his April 8, 2010, trial, defendant expressed his dissatisfaction with appointed counsel and expressed to the trial court that he wanted new representation. *Id.* at 1. The trial court rejected defendant's request and told defendant he could either proceed with the counsel appointed or he could represent himself. *Id.* Defendant told the court that he did not want to represent himself; however, the court required

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<sup>1</sup> Defendant filed an application for leave to appeal the August 16, 2011, decision of this Court to the Michigan Supreme Court; however, the Supreme Court denied defendant's application. *People v Scott*, 490 Mich 1002; 807 NW2d 327 (2012).

him to proceed. *Id.* On appeal, defendant contended that, among other issues, he was denied the right to counsel. Ultimately, this Court concluded that defendant “was denied the fundamental right to counsel and we must vacate his convictions and sentences.” *Id.* at 13.

Particularly relevant to the resolution of this appeal, in this Court’s previous decision, this Court was faced with a question whether the circuit court erred when it denied defendant’s motion to suppress the evidence obtained as a result of the search of defendant’s gym bag. *Id.* at 8. This Court explained the following:

Scott raises a decidedly narrow challenge to the search of his gym bag. He does not take issue with the officers’ decisions to question him in the small room, pat him down for weapons, or to remove the gym bag from his possession. Rather, Scott asserts that the officers violated his “reasonable and justifiable expectation of privacy” by opening the bag absent any exigent circumstance. According to Scott, the officers themselves eliminated any “safety issue” by walking away from him before opening the bag. We agree with the circuit court that the officers possessed an objectively reasonable belief that the bag held a weapon. Therefore, the officers’ tactical decision to immediately investigate a possible threat to their safety and the safety of nearby health club members did not contravene the Fourth Amendment. [*Id.* at 8.]

This Court then provided the following reasoning in deciding the issue:

Here, reasonable suspicion that Scott had been stealing from lockers supported Bednard’s decision to perform the equivalent of a *Terry* stop. We readily acknowledge that Bednard’s authority to stop, question and frisk Scott did not automatically justify examination of Scott’s gym bag. However, specific and articulable facts came to light during the officers’ investigation that generated legitimate concern that Scott may have concealed a weapon in his duffle bag. Scott behaved evasively, informed the officers that he had been arrested for armed robbery, and his gym bag felt decidedly heavier than a bag containing only gym clothes. The room was small, and located in a busy health club. The objective facts known to the officers gave rise to legitimate concern that the gym bag contained a weapon potentially accessible to Scott. We find the search of the bag reasonable for the officers’ protection, and that the circuit court correctly declined to suppress the evidence found in the bag. [*Id.* at 9.]

Because defendant was denied the right to counsel, this Court vacated defendant’s convictions and sentences and remanded the case for a new trial. *Id.* at 13.

After his new jury trial, a new jury found defendant guilty of all three charges he had previously been charged with. Defendant again appeals and raises two issues.

First, defendant again challenges that the search of his gym bag should have been suppressed. Additionally, defendant contends that the items removed from his pockets, i.e., credit cards, identification cards, membership cards, and cash, should also have been suppressed because the discovery of these items “came shortly after and as an immediate consequence of the

illegal search.” The prosecution contends that the law of the case doctrine precludes this Court from revisiting this issue. We agree. Whether the law of the case doctrine applies is a question of law that this Court reviews de novo. *Duncan v State*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 307790, issued April 2, 2013) (slip op at 7). The Michigan Supreme Court has made clear:

[I]f an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same. [*People v Fisher*, 449 Mich 441, 444-445; 537 NW2d 577 (1995).]

Because the issue of the search of the gym bag was resolved in the previous appeal, we will not revisit the issue here. And because that search was determined to be valid, the subsequent search of a defendant’s person cannot be the fruit of an unlawful search.

Defendant next contends that trial counsel was ineffective for failing to object to the introduction of defendant’s confession into evidence. We need not determine whether counsel’s performance was deficient because, even if it was, defendant has failed to establish prejudice.

To prevail on an ineffective assistance of counsel claim, a defendant must show that he was prejudiced by counsel’s performance, which can be shown by proving that there is a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland v Washington*, 466 US 668, 687, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

Based on the record before us, defendant was not prejudiced by defense counsel’s failure to object for the following reasons: First, every piece of evidence recovered from the search of defendant’s bag was admissible. Second, all of the evidence obtained from the subsequent pat down of defendant was admissible. Thus, because all of the evidence recovered from the search of defendant’s bag, defendant’s person, and defendant’s car was admissible, even without defendant’s confession, the prosecution had ample evidence of defendant’s guilt. Therefore, even if a motion to suppress would have been successful and counsel’s performance was deficient for failing to make such a motion, defendant was not prejudiced by defense trial counsel’s failure to object to the admission of defendant’s confession.

Affirmed.

/s/ Mark T. Boonstra  
/s/ David H. Sawyer  
/s/ Christopher M. Murray